

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LEONARDO GARCIA,

Petitioner,

vs.

MATTHEW CATE,

Respondent.

CASE NO. 10cv2464-IEG(RBB)

Order Adopting in Full Report and
Recommendation; Denying Petition;
Denying Certificate of Appealability

Petitioner Leonardo Garcia has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his sentence in San Diego County Superior Court Case No. SDC206983. Petitioner argues the Superior Court used a prior Juvenile adjudication as a strike to enhance his sentence, in violation of his right to due process. Respondent filed an answer, arguing the state court's decision denying Petitioner's claim was neither contrary to nor an unreasonable application of clearly established Federal law.

Magistrate Judge Ruben Brooks issued a Report and Recommendation on February 28, 2012, recommending the Court deny the petition. The Court is required to review *de novo* those portions of a report and recommendation to which objection are made. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) ("[T]he district judge must review the magistrate judge's findings and recommendations *de novo* if objection is made, but not otherwise."). Here, Petitioner did not file objections to the report and recommendation.


Magistrate Judge Brooks' report and recommendation is based upon the correct legal

1 standard, and fully and completely discusses the reasons why Petitioner is not entitled to relief on
 2 his claim. In short, the Ninth Circuit has held that there is no clearly established Federal law
 3 prohibiting state courts from using juvenile adjudications to enhance the sentence of an adult
 4 offender. *Boyd v. Newland*, 467 F.3d 1139, 1152 (9th Cir. 2006). Therefore, the Court ADOPTS
 5 IN FULL the Report and Recommendation and DENIES the petition for writ of habeas corpus.

6 Pursuant to Rule 11 of the Rules Governing Section 2254 cases, the “district court must
 7 issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” A
 8 certificate of appealability is authorized “if the applicant has made a substantial showing of the
 9 denial of a constitutional right.” 28 U.S.C.A. § 2253(c)(2) (West Supp. 2001). When a petitioner's
 10 claims have been denied on their merits, as here, a petitioner can meet the threshold “substantial
 11 showing of the denial of a constitutional right,” by demonstrating that: (1) the issues are debatable
 12 among jurists of reason; or (2) that a court could resolve the issues in a different manner; or (3)
 13 that the questions are adequate to deserve encouragement to proceed further. *Lambright v.*
 14 *Stewart*, 220 F.3d 1022, 1024-25 (9th Cir. 2000), citing *Slack v. McDaniel*, 529 U.S. 473 (2000),
 15 and *Barefoot v. Estelle*, 463 U.S. 880 (1983). The Ninth Circuit in *Boyd* resolved the sole issue in
 16 the petition, and the Court does not believe “jurists of reason” would disagree on Petitioner’s
 17 entitlement to relief. Therefore, the Court DENIES a certificate of appealability.

18 **IT IS SO ORDERED.**

19 **DATED: April 26, 2012**

20 
 21 IRMA E. GONZALEZ, Chief Judge
 22 United States District Court
 23
 24
 25
 26
 27
 28